

SENATE BILL REPORT

SB 5032

As Reported by Senate Committee On:
Government Operations & Elections, January 29, 2009

Title: An act relating to the Washington code of military justice.

Brief Description: Concerning the Washington code of military justice.

Sponsors: Senators Hobbs, Swecker, McCaslin, Shin, Berkey, Haugen, Hatfield, McAuliffe and Kilmer; by request of Military Department and Joint Committee on Veterans' and Military Affairs.

Brief History:

Committee Activity: Government Operations & Elections: 1/15/09, 1/29/09 [DPS].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5032 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Benton, McDermott, Pridemore and Swecker.

Staff: Aaron Gutierrez (786-7448)

Background: The Washington Code of Military Justice (WCMJ) governs the organization, administration, and duties of the Washington National Guard. The WCMJ applies to offenses committed by members of the National Guard while on inactive duty (such as a drill weekend) or active state service. It does not apply to National Guard troops on federal active duty status under Title 10 of the United States Code.

The WCMJ initially paralleled the Uniform Code of Military Justice (UCMJ). The last substantial update to the WCMJ was in 1989, and changes to the UCMJ since that date have not been reflected in the WCMJ.

Summary of Bill (Recommended Substitute): The WCMJ is updated to reflect changes to the UCMJ. Changes include:

- The WCMJ applies to military offenses committed by members of the National Guard at any time. Nonmilitary offenses committed by members of the National Guard are not actionable under the WCMJ, and a member of the National Guard who commits a

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nonmilitary offense within a state armory will be turned over to civilian authorities for prosecution. For an offense that is both a military and nonmilitary offense, prosecution by civilian authorities takes precedence.

- A "military offense" is any of the offenses listed in RCW 38.38.644 through 38.38.800, as well as the two new offenses listed below.
- A "nonmilitary offense" is any of the criminal offenses listed in Title 9 and 9A of the RCW.
- Two new offenses are punishable under the WCMJ: assault between members of the National Guard and the sale, possession, use, or introduction into military property of illegal substances.
- The maximum fine for a general court martial is increased from \$200 to \$300.
- The offenses of drunk and reckless driving are updated and clarified. A definition of blood alcohol content (BAC) is added, and a maximum BAC limit of 0.08 percent is set.
- If an investigation reveals an additional, uncharged crime, the uncharged crime may be investigated if certain conditions apply.
- If new members are added to the jury as a result of preemptory jury challenges, both the accused and trial counsel are entitled to one additional challenge against the new jury members.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS & ELECTIONS COMMITTEE (Recommended Substitute):

- Nonmilitary offense is no longer just the offenses listed in Titles 9 and 9A. It is now any offense not specifically mentioned in the military code.
- Assisting the accused in a review of a court-martial is now mandatory, by changing a "may" to a "shall."
- Removes changes to the statute of limitations.
- Corrects an internal reference.
- Added the word "or" – an illegal substance is any of those things, not all.
- Removes the phrase "and all conduct of a nature to bring discredit upon the organized militia or armed forces."
- Enlisted members must receive an explanation of the code within 40 days, rather than 30 (current law is 60).

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: The WCMJ is adapted from the UCMJ. This bill is based off a model state military code. The Washington Military Department would like to expand jurisdiction of the WCMJ to offenses that affect time on duty. For example, if an officer harasses another officer when not on duty status, that harassment will affect those officers when they are on duty status. The National Guard

should also have jurisdiction over certain offenses that are currently within civilian jurisdiction. For example, if two enlisted persons get into a fist fight while on duty, the National Guard must involve civilian authorities. This bill affects four main areas: jurisdiction, maximum confinement, drunk driving, and illegal substances.

Persons Testifying: PRO: Gordon Toney, Washington Military Department.